

EXHIBIT 44

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F. Bartolotta
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

LEHMAN BROTHERS HOLDINGS, Chapter 11
INC., et al., Case No. 08-13555 (SCC)
Debtors.

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VIDEOTAPED DEPOSITION OF FRANK BARTOLOTTA
New York, New York
Wednesday, May 7, 2014

Reported by:
THOMAS A. FERNICOLA, RPR
JOB NO. 73217

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<p>1 F. Bartolotta</p> <p>2 FRANK BARTOLOTTA,</p> <p>3 called as a witness, having been duly sworn</p> <p>4 by a Notary Public, was examined and</p> <p>5 testified as follows:</p> <p>6 BY THE REPORTER:</p> <p>7 Q. Please state your full name and</p> <p>8 address for the record.</p> <p>9 A. Frank Bartolotta, 5019 Rustic Oaks</p> <p>10 Circle, Naples, Florida 34105.</p> <p>11</p> <p>12 EXAMINATION BY MR. ISAKOFF:</p> <p>13 Q. Mr. Bartolotta, how are you currently</p> <p>14 employed?</p> <p>15 A. I'm employed as a consultant by</p> <p>16 Morgan Stanley.</p> <p>17 Q. Have you ever had your deposition</p> <p>18 taken before?</p> <p>19 A. No.</p> <p>20 Q. Okay.</p> <p>21 Just to go over a couple of the</p> <p>22 ground rules. Obviously, we have a court</p> <p>23 reporter and a videographer taking down</p> <p>24 everything verbatim, so we should try not to</p> <p>25 talk at the same time so there's a clear</p>	<p>1 F. Bartolotta</p> <p>2 Q. Okay.</p> <p>3 Did you review anything else?</p> <p>4 A. No. I looked back at the document,</p> <p>5 the document that was in question that was sent</p> <p>6 to me and that's it.</p> <p>7 Q. What document is that?</p> <p>8 A. The indemnity agreement that was in</p> <p>9 the lease.</p> <p>10 Q. You're talking about Schedule 4 to</p> <p>11 the lease?</p> <p>12 A. Yes. Yes.</p> <p>13 Q. Okay. All right.</p> <p>14 And could you just briefly sketch</p> <p>15 your educational background.</p> <p>16 A. Yes.</p> <p>17 I went to Fordham Law School, and</p> <p>18 after graduating from Williams College and</p> <p>19 taught school for a brief period of time.</p> <p>20 Joined White & Case in 1978. Left</p> <p>21 White & Case in 1984 to join Morgan Stanley</p> <p>22 Realty.</p> <p>23 I left Morgan Stanley Realty after</p> <p>24 being transferred to London. I left London in</p> <p>25 1995 to join Credit Suisse back in New York.</p>
Page 7	Page 9
<p>1 F. Bartolotta</p> <p>2 record.</p> <p>3 If there's anything you don't</p> <p>4 understand about a question, please let me know</p> <p>5 and I'll do my best to clarify it.</p> <p>6 If you need a break at any time,</p> <p>7 that's fine. You can consult with your counsel</p> <p>8 but not while a question is pending.</p> <p>9 A. Okay.</p> <p>10 Q. Do you have any questions before we</p> <p>11 proceed?</p> <p>12 A. No.</p> <p>13 Q. We have never met before; correct?</p> <p>14 A. No, we have spoken on the phone but</p> <p>15 never met.</p> <p>16 Q. We have.</p> <p>17 What, if anything, did you do to</p> <p>18 prepare to testify here today?</p> <p>19 A. Not much. Just talked to my attorney</p> <p>20 about how to answer the questions truthfully</p> <p>21 and directly.</p> <p>22 Q. Okay.</p> <p>23 Did you review the affidavit that was</p> <p>24 recently filed?</p> <p>25 A. Yes, I did.</p>	<p>1 F. Bartolotta</p> <p>2 And then I left Credit Suisse in 2000</p> <p>3 to join Lehman Brothers in London.</p> <p>4 Returned to New York with Lehman</p> <p>5 Brothers in 2004.</p> <p>6 Retired, left Lehman Brothers as an</p> <p>7 employee in 2006, and worked for Lehman</p> <p>8 Brothers as a consultant from 2006 until just</p> <p>9 before the bankruptcy. And then returned to</p> <p>10 work for Lehman in the bankruptcy in January of</p> <p>11 2009, and worked for Lehman as a consultant up</p> <p>12 to August of 2012, and then joined Morgan</p> <p>13 Stanley as a consultant in May of 2013.</p> <p>14 Q. All right. Thank you very much.</p> <p>15 What kind of law did you practice at</p> <p>16 White & Case?</p> <p>17 A. Real estate.</p> <p>18 Q. How did you come to give an affidavit</p> <p>19 this last March?</p> <p>20 A. I was called by Mr. Iacobescu who</p> <p>21 asked if I would speak to his attorneys about</p> <p>22 the litigation. I said I would. They called</p> <p>23 me. They asked me questions about what</p> <p>24 happened during the negotiations and my role in</p> <p>25 it, and asked me if I would be willing to sign</p>

1 F. Bartolotta
2 an affidavit based upon the discussions that we
3 had over the phone.

4 Q. When was your conversation with
5 Mr. Iacobescu that you just referred to?

6 A. It would have been some time mid
7 March.

8 Q. Did he call you or did you call him?

9 A. I think he called me.

10 Q. And what -- how long did this
11 conversation last?

12 A. My recollection it was very short.
13 He just asked me if I would speak to his
14 attorneys.

15 Q. Okay.

16 Was anybody else on the phone?

17 A. No, not to my knowledge.

18 Q. Did he tell you what he wanted you to
19 speak to his attorneys about?

20 A. No. I knew it was in regard to
21 litigation, but he didn't say specifically
22 what.

23 Q. Okay.

24 Did you let anybody from Lehman know
25 or any representative of Lehman know that you

1 F. Bartolotta
2 things.

3 I asked him -- I actually asked him
4 if what was going on with the litigation. He
5 said it was still ongoing. And that was really
6 all we talked about at that lunch, other than
7 the business that I had with Morgan Stanley
8 which he was involved with.

9 Q. Just to make sure the record is
10 clear. Do you recall anything else as to what
11 it was he wanted you to talk to his attorneys
12 about?

13 A. No. He just asked me to talk to the
14 attorneys.

15 Q. Okay.

16 MR. ISAKOFF: Let's mark this.

17 (Bartolotta's Exhibit 1, Affidavit
18 of Frank Bartolotta dated March 27, Bates
19 Nos. CW75982 to 84, was marked for
20 identification.)

21 BY MR. MASELLA:

22 Q. Mr. Bartolotta, I'm handing you
23 what's been marked as Exhibit 1, Bartolotta
24 Exhibit 1.

25 Is this affidavit that you signed

1 F. Bartolotta
2 had been approached --

3 A. No.

4 Q. -- with this request?

5 A. No.

6 Q. Let's make sure I just finish the
7 question just for the clear record. Okay.

8 Was there anything else that you can
9 recall about your conversation with
10 Mr. Iacobescu?

11 A. I had a couple of conversations with
12 him, but that was the one in which he asked me
13 to talk to his attorneys.

14 Q. Okay.

15 Did you have any other conversations
16 with Mr. Iacobescu in and about March of this
17 year --

18 A. No.

19 Q. Hold on a second. Let me finish the
20 question -- relating at all to the it care
21 would have claims against Lehman Brothers
22 Holdings, Inc.?

23 A. Yes. I was in London on a deal for
24 Morgan Stanley and I had lunch with
25 Mr. Iacobescu and we talked about a lot of

1 F. Bartolotta
2 this last March 27th?

3 MR. MASELLA: Let me know you're done
4 looking it over.

5 A. (Document review.)

6 Yes.

7 Q. Okay.

8 Do you recall how much time there was
9 between when you spoke to Mr. Iacobescu and he
10 asked you to speak to his lawyers and when you
11 contacted anybody representing Canary Wharf?

12 A. I'm sorry, I don't remember how long
13 it was between my conversation, but it would
14 have been short. Because it was all -- my
15 visit out there and my signing this was all
16 within a two-week time frame in March.

17 Q. Okay.

18 Did you place a call to any attorneys
19 for Canary Wharf?

20 A. Subsequent to my first contact from
21 the attorneys at Sullivan & Cromwell, yes.

22 Q. Okay.

23 So after you spoke to Mr. Iacobescu
24 about speaking to his attorneys, who contacted
25 who?

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<p>1 F. Bartolotta</p> <p>2 A. I believe someone contacted me.</p> <p>3 Q. Who do you know?</p> <p>4 A. It was Mr. Shenker and Mr. Tulchin.</p> <p>5 Q. Okay.</p> <p>6 And what was said in that</p> <p>7 conversation, if you can recall?</p> <p>8 A. They asked me questions about what</p> <p>9 happened during the negotiations and what my</p> <p>10 recollection of -- about the negotiations, and</p> <p>11 in reference specifically to this document that</p> <p>12 was delivered, how that occurred.</p> <p>13 Q. What do you recall you said in the</p> <p>14 conversation?</p> <p>15 A. I told him that I was negotiating the</p> <p>16 document, the lease documents, and I was trying</p> <p>17 to avoid delivering this indemnity. And that</p> <p>18 it was my understanding that we did not want to</p> <p>19 deliver this document and that I couldn't close</p> <p>20 the deal without delivering the document.</p> <p>21 Canary Wharf, their attorneys and</p> <p>22 Mr. Iacobescu was insisting that we deliver</p> <p>23 this, and I basically booted it back to</p> <p>24 New York because I was involved in many, many</p> <p>25 other things around the documents and the</p>	<p>1 F. Bartolotta</p> <p>2 A. He was in the Treasury Group.</p> <p>3 Q. And you didn't recall that person's</p> <p>4 name when I asked you about a year ago --</p> <p>5 A. Right.</p> <p>6 Q. -- correct?</p> <p>7 A. Right.</p> <p>8 Q. Let's make sure I finish the</p> <p>9 question.</p> <p>10 A. Uh-huh.</p> <p>11 Q. I'm sure you'd like to end it sooner</p> <p>12 rather than later. It will be a little easier</p> <p>13 if we can speak one at a time.</p> <p>14 Can you recall anything else about</p> <p>15 your conversation that you just talked about</p> <p>16 with Mr. Tulchin and Mr. Shenker?</p> <p>17 A. When we talked over the phone, they</p> <p>18 just said they were going to send me a document</p> <p>19 that would reflect what our conversations were.</p> <p>20 And then we had a couple of</p> <p>21 conversations about the language that was in</p> <p>22 there, that I wanted some changes, and then</p> <p>23 they delivered the document.</p> <p>24 Q. Okay.</p> <p>25 When you had this first</p>
Page 15	Page 17
<p>1 F. Bartolotta</p> <p>2 design of the building, and I wasn't successful</p> <p>3 in avoiding delivery of the document.</p> <p>4 Q. Okay.</p> <p>5 Did you yourself have any role in</p> <p>6 negotiating the content of the Surety</p> <p>7 Agreement?</p> <p>8 A. No.</p> <p>9 Q. Do you know whether there were any</p> <p>10 changes to the Surety Agreement -- first of</p> <p>11 all, do you know that Canary Wharf drafted the</p> <p>12 Surety Agreement?</p> <p>13 A. Oh, yes.</p> <p>14 Q. Okay.</p> <p>15 And do you know whether there were</p> <p>16 any changes to that draft between the time it</p> <p>17 was first shown to Lehman Brothers Holdings,</p> <p>18 Inc. and when it was signed?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you know who it was at Lehman</p> <p>21 Brothers Holdings, Inc. that was dealing with</p> <p>22 the Surety Agreement?</p> <p>23 A. I remember the person's position. I</p> <p>24 don't remember their name.</p> <p>25 Q. What was the position?</p>	<p>1 F. Bartolotta</p> <p>2 conversation --</p> <p>3 A. Uh-huh.</p> <p>4 Q. -- had you -- did you have a copy of</p> <p>5 the Surety Agreement in front of you?</p> <p>6 A. No.</p> <p>7 Q. You eventually got a copy; correct?</p> <p>8 A. Yes.</p> <p>9 Q. In this first conversation, was there</p> <p>10 any discussion with Mr. Shenker and Mr. Tulchin</p> <p>11 about the distinction between a guarantee and</p> <p>12 an indemnity under English law?</p> <p>13 A. Yes. I was told there was a</p> <p>14 distinction.</p> <p>15 Q. And when for the first time did you</p> <p>16 learn that there was such a distinction in</p> <p>17 English law?</p> <p>18 A. I had some brief understanding of the</p> <p>19 distinction when I had been there on the Morgan</p> <p>20 Stanley deal, because an issue came up; but I</p> <p>21 did not really fully understand what the</p> <p>22 difference was.</p> <p>23 Q. When you say "there on the Morgan</p> <p>24 Stanley deal," what is the time frame for that?</p> <p>25 A. When I was there in London in March.</p>

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1 F. Bartolotta
2 Q. In March of 2014?
3 A. Yes.
4 Q. Okay.
5 Had you had any understanding of the
6 distinction between a guarantee and an
7 indemnity under English law prior to that time?
8 A. No.
9 Q. Are you aware of -- well, let me ask
10 it this way.
11 Was there any other discussion of
12 English law in the conversation with
13 Mr. Shenker and Mr. Tulchin the first time
14 before you saw the Surety Agreement?
15 A. I don't recall if it was before or
16 after, but there was a brief discussion about
17 the fact that they were different.
18 Q. A guarantee and an indemnity are
19 different?
20 A. Yes.
21 Q. Okay.
22 Do you recall what the difference is?
23 A. As I understand it, the indemnity
24 means that the parent would have backed them up
25 in any instance, including bankruptcy, and the

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1 F. Bartolotta
2 you, Mr. Bartolotta, saying, "Frank, As
3 discussed a few minutes ago, here is Schedule
4 44," and attaching to it a copy of Schedule 44
5 to the lease.
6 Do you see that?
7 A. Yes.
8 MR. MASELLA: Now, I don't think the
9 witness has reviewed the document yet, have
10 you?
11 THE WITNESS: No.
12 MR. MASELLA: Okay. Take a moment to
13 review the document and let him know when
14 you're done.
15 MR. ISAKOFF: Of course.
16 A. (Document Review.)
17 Okay.
18 Q. Do you recall receiving this?
19 A. Yes.
20 Q. And it says on the first page, "As
21 discussed a few minutes ago."
22 Do you recall whether this was after
23 only a single conversation you had with
24 Mr. Tulchin by this time?
25 A. I believe this was after the first

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1 F. Bartolotta
2 guarantee might not include a backup when the
3 subsidiary went bankrupt.
4 Q. Okay.
5 Are you aware of the rule in English
6 law that when a landlord forfeits a lease or
7 terminates a lease because of the tenant's
8 default that there can be no damages for lost
9 future rent against the tenant?
10 A. No.
11 Q. You're not familiar with that rule?
12 A. No. No.
13 Q. Are you familiar with the issues that
14 are in litigation as between Lehman Brothers
15 Holdings, Inc. and Canary Wharf at this time?
16 A. No. Other than what I've just said.
17 (Bartolotta's Exhibit 2, EMail from
18 Mr. Tulchin to Frank Bartolotta, Bates
19 Stamp Nos. CW75954 to 58, was marked for
20 identification.)
21 BY MR. ISAKOFF:
22 Q. We have marked as Exhibit 2 --
23 Exhibit 1 for the record is Bates stamp CW75982
24 to 84, and this one, No. 2, is CW75954 through
25 58. And it is an email from Mr. Tulchin to

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1 F. Bartolotta
2 call, I asked to see the document since I
3 didn't really recall what was in the document.
4 And since it seemed to be the point of the
5 whole litigation, I wanted to just take a look
6 at it, so I requested it.
7 Q. You referred to this a couple of
8 times during this deposition as an indemnity.
9 A. Uh-huh.
10 Q. Do you know that it's an indemnity
11 within the meaning of English law?
12 A. I do not. I only said that because
13 it says Indemnity.
14 Q. In the title to Section 1 of this?
15 A. Yes.
16 Q. Okay.
17 Do you see that in Section 10, which
18 is on the last page of this --
19 A. Uh-huh.
20 Q. -- it refers to a guarantor?
21 A. Yes.
22 Q. Okay.
23 Did anybody point out that Section 10
24 uses the term "guarantor"?
25 A. No.

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<p>1 F. Bartolotta</p> <p>2 Q. And if you look at Section 8, you see</p> <p>3 that Section 8 refers to "this guarantee and</p> <p>4 indemnity."</p> <p>5 Did anybody point that out to you?</p> <p>6 A. No.</p> <p>7 Q. Do you have a recollection of anybody</p> <p>8 back in 2001 referring to this as an indemnity</p> <p>9 as distinguished from a guarantee or a surety</p> <p>10 agreement?</p> <p>11 A. No, I don't.</p> <p>12 Q. Now, how about in 2000?</p> <p>13 A. No.</p> <p>14 Q. Did Mr. Iacobescu refer to it as an</p> <p>15 indemnity?</p> <p>16 A. Oh, I don't recall.</p> <p>17 (Brijesh P. Dave and Richard Katz</p> <p>18 enter the deposition proceedings.)</p> <p>19 BY MR. ISAKOFF:</p> <p>20 Q. But I assume Mr. Tulchin did?</p> <p>21 A. Yes.</p> <p>22 Q. Did anybody discuss with you Section</p> <p>23 7? I'm talking about Mr. Tulchin or anybody</p> <p>24 from Sullivan & Cromwell discuss with you</p> <p>25 Section 7 which provides what happens in the</p>	<p>1 F. Bartolotta</p> <p>2 and Sullivan & Cromwell.</p> <p>3 Now, this says this is a follow-on to</p> <p>4 the last email about -- it looks like about 20</p> <p>5 minutes later, asking do you have time for a</p> <p>6 quick call.</p> <p>7 Do you recall having a telephone</p> <p>8 conversation?</p> <p>9 A. Yes. We had several conversations</p> <p>10 over the two or three-day period from when they</p> <p>11 first contacted me to the time I delivered.</p> <p>12 Q. Do you happen to remember what the</p> <p>13 subject of this was, having just gotten the</p> <p>14 Surety Agreement?</p> <p>15 A. No. We had several quick calls about</p> <p>16 the drafts of the document.</p> <p>17 Q. Okay.</p> <p>18 (Bartolotta's Exhibit 4, EMail from</p> <p>19 Mr. Tulchin, Bates No. CW75960, was</p> <p>20 marked for identification.)</p> <p>21 BY MR. ISAKOFF:</p> <p>22 Q. We've marked as Exhibit 4, CW75960,</p> <p>23 which is Mr. Tulchin's email to you two minutes</p> <p>24 after the last exhibit and saying that he'll</p> <p>25 call you. I'm just doing this for</p>
Page 23	Page 25
<p>1 F. Bartolotta</p> <p>2 event there's a forfeiture of the underlying</p> <p>3 lease?</p> <p>4 A. We didn't even get into the details</p> <p>5 of this document. I just asked for this</p> <p>6 document to look at it, and it was really more</p> <p>7 about what was the language in my affidavit.</p> <p>8 Q. Okay.</p> <p>9 Did anyone tell you that in English</p> <p>10 law the word "indemnity" has two different</p> <p>11 meanings quite different from one another?</p> <p>12 A. I don't recall having the specific</p> <p>13 conversations about the difference. To me, it</p> <p>14 was all the same, guarantee, indemnity, it all</p> <p>15 means the same thing.</p> <p>16 Q. Okay.</p> <p>17 A. I'm not an English lawyer either.</p> <p>18 Q. I appreciate that, sir.</p> <p>19 (Bartolotta's Exhibit 3, EMail,</p> <p>20 Bates No. CW75959, was marked for</p> <p>21 identification.)</p> <p>22 BY MR. ISAKOFF:</p> <p>23 Q. Mr. Bartolotta, we've marked as</p> <p>24 Exhibit 3, CW75959, and it's just the next item</p> <p>25 in the chronology of communications between you</p>	<p>1 F. Bartolotta</p> <p>2 completeness, really, because this doesn't say</p> <p>3 much.</p> <p>4 A. Okay.</p> <p>5 Q. But do you recall that he then called</p> <p>6 you?</p> <p>7 A. Uh-huh. Yes.</p> <p>8 Q. Yes. Okay. All right.</p> <p>9 (Bartolotta's Exhibit 5, EMail from</p> <p>10 Mr. Tulchin, Bates No. CW75961 to 64, was</p> <p>11 marked for identification.)</p> <p>12 BY MR. ISAKOFF:</p> <p>13 Q. For the record, we've just marked</p> <p>14 Exhibit 5 which is CW759961 to 64, which is an</p> <p>15 email from Mr. Tulchin to you about an hour and</p> <p>16 18 minutes after the last one, attaching what</p> <p>17 looks like a draft of your affidavit.</p> <p>18 Why don't you take whatever time you</p> <p>19 need to review this and let me know if I've</p> <p>20 accurately characterized it.</p> <p>21 A. (Document Review.)</p> <p>22 Yes.</p> <p>23 Q. Okay.</p> <p>24 Now, you might want to get out</p> <p>25 Exhibit 1, which is the final --</p>

1 F. Bartolotta
2 A. Uh-huh.
3 Q. -- because we may want to compare
4 different portions of this where there were
5 some changes.
6 Did you actually do any of the
7 drafting of the affidavit in the sense of doing
8 the word processing on it, or did you just
9 comment on drafts that Mr. Tulchin sent you?
10 A. I commented on drafts.
11 Q. Okay.
12 Did you dictate any of the affidavit
13 to Mr. Tulchin?
14 A. No. I just marked the document for
15 the revisions that I thought were appropriate,
16 or I might have even given it to him over the
17 phone. I don't recall whether I sent anything
18 or just spoke to him over the phone, but I made
19 revisions to the draft.
20 Q. Okay.
21 But you didn't draft any of this --
22 A. No.
23 Q. -- in the first instance?
24 A. No.
25 Q. Okay.

1 F. Bartolotta
2 Now, if you'll look at paragraph 3 of
3 Exhibit 5, it says, the second sentence says,
4 "During the course of negotiations, I reported
5 to Mark Marcucci in New York and all points of
6 a material commercial significance went back to
7 New York."
8 Have I read it accurately?
9 A. Yes.
10 Q. Okay.
11 And if you'll notice on paragraph 3
12 of the final takes much of that out.
13 Was that at your request?
14 A. Yes.
15 Q. What was it -- what was the reason
16 why you asked for that to be changed?
17 A. The reason was that I didn't think my
18 reporting to Mr. Marcucci was relevant to the
19 point, because although technically I reported
20 to him, I reported both locally and to him.
21 And he didn't have anything specific in terms
22 of the negotiations of this document and in
23 many ways didn't really involve himself in the
24 negotiation of the documents.
25 I would negotiate things, send them

1 F. Bartolotta
2 back, and say this is where I'm going, but most
3 of the hard business decisions were made
4 jointly with London and New York.
5 Q. Okay.
6 In the final Exhibit 1, where it
7 says, "The question of whether Lehman itself,
8 the parent in New York, would extend an
9 indemnity went back to Lehman at its
10 headquarters in New York," was that word
11 "indemnity" your word or Mr. Tulchin's?
12 A. It was in the draft that was sent to
13 me and I agreed with it because that's what the
14 document said.
15 Q. And that that's what the word on the
16 heading?
17 A. Yes.
18 Q. -- of Section 1 of the --
19 A. Yes.
20 Q. Let me finish my question.
21 That's because the heading of
22 Section 1 of Schedule I used the word
23 "indemnity"; correct?
24 A. Correct.
25 Q. And for no other reason; correct?

1 F. Bartolotta
2 A. Correct.
3 MR. MASELLA: Objection.
4 You may answer.
5 BY MR. ISAKOFF:
6 Q. Okay.
7 If you'll turn to the second page of
8 the draft affidavit that is part of Exhibit 5,
9 it begins, "I recall the negotiations around
10 the provisions in the lease dealing with the
11 indemnity to be given by the parent company,
12 Lehman."
13 Is the word "indemnity" there used,
14 so far as you know, for the same reason that it
15 was in the paragraph we just discussed,
16 paragraph 3?
17 A. Yes.
18 Q. And that was in the draft as you got
19 it; correct?
20 A. Yes.
21 Q. And then that sentence continues,
22 where it says, "The indem -- I recall the
23 negotiations around the provisions in the lease
24 dealing with the indemnity to be given by the
25 parent company, Lehman, because we fought very

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1 F. Bartolotta
2 hard for several weeks to limit those
3 provisions to those of the guarantor under
4 English law."
5 Do you see that?
6 A. Yes.
7 Q. And in the final, looking at the
8 beginning of paragraph 5 of Exhibit 1, it says,
9 "I recall the negotiations around the
10 provisions in the lease dealing with the
11 indemnity to be given by the parent company,
12 Lehman, because we fought very hard to limit
13 liability to the English subsidiary."
14 A. Uh-huh.
15 Q. Was that change made at your request?
16 A. Yes.
17 Q. Why did you request that change?
18 A. Because I thought the way it was
19 drafted was leading into the argument of what's
20 an indemnity or a guarantee. And I wanted to
21 describe it as I understood it, which is
22 basically it's a full obligation of the parent
23 to back up the subsidiary in any event.
24 So I didn't want to get into a legal
25 argument. I didn't feel I was, you know, I had

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1 F. Bartolotta
2 the knowledge to do that.
3 Q. Right.
4 And, in fact, you had no recollection
5 of there being any fight to limit the
6 provisions to those of the guarantor under
7 English law; correct?
8 A. No. I had recollection of their --
9 of us trying to avoid any liability of the
10 parent.
11 Q. Right.
12 But you recall the point of
13 contention being was whether Lehman would sign
14 the Surety Agreement at all; correct?
15 A. Yes.
16 Q. Okay.
17 And so far as you know, there was no
18 fight to limit the provisions of that Surety
19 Agreement to those of the guarantor under
20 English law?
21 A. The fight was to prevent to limit the
22 liability to the English subsidiary. Just what
23 I said.
24 Q. Right.
25 But this sentence that was given to

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1 F. Bartolotta
2 you in draft was without basis so far as your
3 knowledge is concerned; correct?
4 A. No. You're putting words in my
5 mouth. I said I didn't like the way it was
6 worded. I changed it to this way because this
7 was my understanding of what we were trying to
8 do, was trying to avoid the parent having any
9 liability.
10 Q. Okay.
11 At this point in your discussions
12 with Sullivan & Cromwell, you didn't tell them
13 that Lehman had fought to limit the provisions
14 to those of the guarantor under English law
15 because you didn't even know what that meant
16 back at the time of the negotiations; correct?
17 A. No, I wouldn't have used those words.
18 Q. Okay.
19 Now, paragraph 5 goes on to say after
20 Canary Wharf's position was immovable, it says,
21 "George Iacobescu, CEO of Canary Wharf,
22 insisted on a direct contractual obligation
23 from Lehman that" --
24 MR. TULCHIN: Can I ask you if you're
25 reading from the draft or the final --

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1 F. Bartolotta
2 MR. ISAKOFF: Draft.
3 MR. TULCHIN: -- because it's not
4 clear from the record.
5 MR. ISAKOFF: I'm sorry, I'm reading
6 from paragraph 5 of Exhibit 5. Thank you.
7 BY MR. ISAKOFF:
8 Q. It says, George Iacobescu, CEO of
9 Canary Wharf, insisted on a direct contractual
10 obligation from Lehman that could be relied on
11 whatever happened to LBL and have certainty
12 that Lehman would be required to pay the rents
13 and other amounts due regardless of
14 enforceability against LBL or LBL's condition
15 or status."
16 Are those words that you used in your
17 conversations with Mr. Tulchin?
18 A. I don't recall if those were my
19 direct -- those are my exact words. We had an
20 open conversation about what was the setting of
21 what happened. I don't recall if those were my
22 exact words.
23 Q. Okay.
24 Now, if you look at paragraph 5 in
25 Exhibit 1, which is the final version, it says,

Page 34	Page 36
<p>1 F. Bartolotta</p> <p>2 "After, however, Canary Wharf's position was</p> <p>3 immovable," it says, "George Iacobescu, CEO of</p> <p>4 Canary Wharf, insisted on a full indemnity."</p> <p>5 Let me just stop there.</p> <p>6 Do you have a recollection of him</p> <p>7 using those words back in 2000 or 2001?</p> <p>8 A. No. My use of the word is simply</p> <p>9 because when I saw the document it said</p> <p>10 "indemnity," and so that's what I called it.</p> <p>11 Q. Okay.</p> <p>12 Then it adds, "I.e., a direct</p> <p>13 contractual obligation from the parent, Lehman,</p> <p>14 that could be relied on no matter what happened</p> <p>15 to LBL, the English subsidiary."</p> <p>16 Were those words you used with</p> <p>17 Mr. Tulchin?</p> <p>18 A. Yes. Because that was my</p> <p>19 understanding. There was an absolute</p> <p>20 obligation of the parent, whether you called it</p> <p>21 guarantee or indemnity, that's what it really</p> <p>22 was, a direct full obligation of the parent to</p> <p>23 back up the subsidiary.</p> <p>24 Q. Okay.</p> <p>25 Now, do you know whether, in the</p>	<p>1 F. Bartolotta</p> <p>2 to go back and read the lease documents again</p> <p>3 to see if the numbers were accurate.</p> <p>4 The only one I really remembered was</p> <p>5 the rent-free period.</p> <p>6 Q. There's a sentence at the end of</p> <p>7 paragraph 6 in Exhibit 1, the final, which does</p> <p>8 not appear at least in those exact words in</p> <p>9 Exhibit 5. And they say, "These upfront</p> <p>10 payments and obligations assumed by Canary</p> <p>11 Wharf appeared to make Canary Wharf even more</p> <p>12 determined to obtain the indemnity."</p> <p>13 First of all, is the word "indemnity"</p> <p>14 used there for the same reason it was in</p> <p>15 paragraphs --</p> <p>16 A. Everywhere in this --</p> <p>17 Q. -- 3 and 5?</p> <p>18 A. Sorry. Everywhere in this document I</p> <p>19 used the word because that's what the document</p> <p>20 said. To make it easy to go back and forth.</p> <p>21 Q. And was this something that you, this</p> <p>22 sentence that I just read from Exhibit 1, is</p> <p>23 that something that you recall saying to</p> <p>24 Mr. Tulchin?</p> <p>25 A. Yes.</p>
Page 35	Page 37
<p>1 F. Bartolotta</p> <p>2 event a landlord forfeits a lease and the</p> <p>3 tenant is no longer obligated to pay rents,</p> <p>4 whether the guarantor, a guarantor is obligated</p> <p>5 to pay those rents?</p> <p>6 A. Under --</p> <p>7 MR. MASELLA: I'm going to object to</p> <p>8 the hypothetical.</p> <p>9 You may answer.</p> <p>10 A. Under English law?</p> <p>11 Q. Yes.</p> <p>12 A. No, I'm not an English lawyer. I</p> <p>13 don't.</p> <p>14 Q. Okay.</p> <p>15 Now if you'll compare paragraph 6 of</p> <p>16 Exhibit 5 with paragraph 6 of Exhibit 1, there</p> <p>17 are some figures that appear in the Exhibit 5,</p> <p>18 which is the draft, but don't appear in the</p> <p>19 final.</p> <p>20 Was it your idea to take those out?</p> <p>21 A. Yes.</p> <p>22 Q. And what was the reason for that?</p> <p>23 A. Because I couldn't recall the exact</p> <p>24 numbers myself. I had a good idea what they</p> <p>25 were, but I couldn't recall and I didn't want</p>	<p>1 F. Bartolotta</p> <p>2 Q. Okay.</p> <p>3 So the point being that because</p> <p>4 Canary Wharf was making various commitments on</p> <p>5 its side, it wanted to get the Surety Agreement</p> <p>6 that it had drafted signed by Lehman Brothers</p> <p>7 Holdings, Inc.; correct?</p> <p>8 A. Well, that's not what this sentence</p> <p>9 is saying. What this sentence says, okay, is</p> <p>10 during the course of the negotiations we were</p> <p>11 asking for more and more and more. And my</p> <p>12 discussions with George Iacobescu was, it was</p> <p>13 getting to the point where we were asking for</p> <p>14 much more than we had started with. And he was</p> <p>15 becoming more insistent that there was no way</p> <p>16 this deal could go through without this</p> <p>17 indemnity being delivered because we were</p> <p>18 asking for much, much more than we had started</p> <p>19 negotiations on.</p> <p>20 Q. Okay.</p> <p>21 When you refer to the indemnity,</p> <p>22 you're referring to Schedule 4?</p> <p>23 A. Yes.</p> <p>24 Q. And so far as you know, there was</p> <p>25 nothing about the terms of Schedule 4 that</p>

1 F. Bartolotta
2 changed during the negotiations, even while
3 Canary Wharf was making other concessions;
4 correct?
5 A. I wouldn't know because I wasn't
6 involved in the negotiation of the document.
7 Q. Okay.
8 (Bartolotta's Exhibit 6, EMail from
9 Mr. Tulchin, Bates No. CW75965 to 68, was
10 marked for identification.)
11 BY MR. ISAKOFF:
12 Q. We've marked, Mr. Bartolotta, as
13 Exhibit 6, CW75965 to 68, which is another
14 email from Mr. Tulchin to you on March 27th,
15 which is the day after Exhibit 5 that we just
16 looked at, attaching a new version of the
17 affidavit; correct?
18 A. Yes.
19 Q. If you'll turn back to Exhibit 5, I'd
20 like to compare that with this one, if we
21 could.
22 Exhibit 5, we already looked at this
23 language in paragraph 3 which in that draft
24 says, "During the course of negotiations, I
25 reported to Mark Marcucci in New York and all

1 F. Bartolotta
2 points of a material commercial significance
3 went back to Lehman in New York."
4 Do you see that?
5 A. Yes.
6 Q. And then in this version, it says,
7 "During the course of negotiations Lehman
8 people in London were involved in the decisions
9 on most issues but the question of whether
10 Lehman itself, the parent in New York, would
11 extend an indemnity went back to Lehman at its
12 headquarters in New York."
13 MR. MASELLA: I'm sorry, you've lost
14 me. Which exhibit are we talking about?
15 MR. ISAKOFF: 6.
16 MR. MASELLA: You want to compare 1
17 and 6 or 1 and 5?
18 MR. ISAKOFF: 5 and 6.
19 MR. MASELLA: 5 and 6.
20 MR. ISAKOFF: I apologize.
21 MR. MASELLA: That's fine. Okay. So
22 paragraph 3 in 5 and 6.
23 BY MR. ISAKOFF:
24 Q. And the question is, is this a change
25 that you requested between 5 and 6?

1 F. Bartolotta
2 A. Okay.
3 MR. MASELLA: So take a look at
4 paragraph 3 in 5 and 6.
5 A. Yes.
6 Q. And why did you request this?
7 A. Simply because it seemed to me that
8 it made it sound -- the first draft made it
9 sound like Mark Marcucci was the
10 decision-maker. And, in reality, he was not
11 really the decision-maker. It was a
12 combination of local London people that I
13 reported to, other people in New York, and
14 Mr. Marcucci, to my knowledge, had nothing to
15 do with the document, the negotiation of the
16 indemnity.
17 (Bartolotta's Exhibit 7, EMail from
18 Mr. Tulchin, Bates No. CW75969 to 72, was
19 marked for identification.)
20 BY MR. ISAKOFF:
21 Q. We've marked as Exhibit 7, CW75969 to
22 72, which is also an email to you from
23 Mr. Tulchin on March 27 attaching a new version
24 of the affidavit saying he -- that "I've made
25 the one change you requested and the final

1 F. Bartolotta
2 version is attached."
3 And the one -- I would just ask you
4 to compare the very last line of Exhibits 6 and
5 7.
6 MR. MASELLA: 6 and 7. That's one.
7 THE WITNESS: That's 7.
8 MR. MASELLA: This is 6. So you want
9 him to compare the last line of 6 and 7;
10 correct?
11 A. Yes, got it.
12 MR. TULCHIN: The last line of the
13 last paragraph?
14 MR. ISAKOFF: Yes.
15 MR. MASELLA: The last paragraph or
16 the last line?
17 MR. ISAKOFF: I'm looking at the last
18 line of the last paragraph.
19 MR. MASELLA: So this one with this
20 one.
21 A. Okay.
22 Q. And in 6, it says, "In the end, Mark
23 Marcucci, the Lehman executive in New York
24 responsible for this decision, accepted that
25 position and the lease included the indemnity

<p style="text-align: right;">Page 42</p> <p>1 F. Bartolotta</p> <p>2 from Lehman that George Iacobescu of Canary</p> <p>3 Wharf demanded," and in Exhibit 7 that sentence</p> <p>4 is shortened to say, "In the end Lehman</p> <p>5 accepted that position and the lease included</p> <p>6 the indemnity from Lehman."</p> <p>7 And I would ask, was that a change</p> <p>8 you requested?</p> <p>9 A. Yes.</p> <p>10 Q. And what was the reason you requested</p> <p>11 the change?</p> <p>12 A. The same reason I said before in the</p> <p>13 other paragraph, and that is that Mark</p> <p>14 Marcucci, to my knowledge, was not making the</p> <p>15 decision on the delivery of this document.</p> <p>16 This was made at a much senior, more senior</p> <p>17 level.</p> <p>18 Q. At Lehman Treasury?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 And the term "indemnity" here is the</p> <p>22 same as used throughout, is for convenience</p> <p>23 because that's what the section heading of</p> <p>24 paragraph 1 said?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 44</p> <p>1 F. Bartolotta</p> <p>2 (Bartolotta's Exhibit 9, EMail from</p> <p>3 Mr. Tulchin, Bates No. CW75977, was</p> <p>4 marked for identification.)</p> <p>5 BY MR. ISAKOFF:</p> <p>6 Q. Exhibit 9 is CW75977, which is</p> <p>7 another email from Mr. Tulchin to you telling</p> <p>8 you who the notary is going to be.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And saying that the notary is going</p> <p>12 to be there at around 3:00 o'clock that</p> <p>13 afternoon, if you look down to the --</p> <p>14 A. Yes.</p> <p>15 Q. And did the notary show up then?</p> <p>16 A. I'm not sure exactly the time, but he</p> <p>17 did show up that afternoon, yes.</p> <p>18 Q. Did you ever find out whether there</p> <p>19 was any urgency about your signing this</p> <p>20 affidavit?</p> <p>21 A. No, I didn't ask.</p> <p>22 Q. Did you ever think about calling</p> <p>23 Lehman or any of its representatives before you</p> <p>24 signed this?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 43</p> <p>1 F. Bartolotta</p> <p>2 Q. I'd ask you to hang on to Exhibit 7</p> <p>3 while we look at Exhibit 8.</p> <p>4 A. Okay.</p> <p>5 (Bartolotta's Exhibit 8, EMail from</p> <p>6 Mr. Tulchin, Bates No. CW75973 to 76, was</p> <p>7 marked for identification.)</p> <p>8 BY MR. ISAKOFF:</p> <p>9 Q. Marked as Exhibit 8, CW75973 to 76,</p> <p>10 another email from Mr. Tulchin to you on</p> <p>11 March 27, 2014, attaching another version of</p> <p>12 the affidavit.</p> <p>13 And I would ask you, again, to turn</p> <p>14 to the last page of Exhibit 7 and the last page</p> <p>15 of Exhibit 8 where the word "absolute" seems to</p> <p>16 be substituted for "bullet proof."</p> <p>17 Was that a change that you requested?</p> <p>18 A. Yes.</p> <p>19 Q. Why?</p> <p>20 A. I just didn't like "bullet proof" in</p> <p>21 quotes.</p> <p>22 Q. Okay.</p> <p>23 And do you recall whether there were</p> <p>24 any further changes after this?</p> <p>25 A. I don't think so.</p>	<p style="text-align: right;">Page 45</p> <p>1 F. Bartolotta</p> <p>2 (Bartolotta's Exhibit 10, EMail</p> <p>3 dated March 27, 2014, Bates No. CW75979,</p> <p>4 was marked for identification.)</p> <p>5 BY MR. ISAKOFF:</p> <p>6 Q. Exhibit 10 is CW75979. It's an email</p> <p>7 from you to Mr. Iacobescu on March 27, 2014 at</p> <p>8 3:02 p.m. where you say in the second</p> <p>9 paragraph, "With regard to the Lehman</p> <p>10 litigation, I will be signing the affidavit</p> <p>11 this afternoon and delivering it to S&C."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall how much after this you</p> <p>15 signed the affidavit?</p> <p>16 A. No, I don't.</p> <p>17 Q. Okay.</p> <p>18 It starts off, it says, "Thanks again</p> <p>19 for your assistance on the Heintz transaction.</p> <p>20 It looks like we're done but for the signatures</p> <p>21 on the document."</p> <p>22 What was that in reference to?</p> <p>23 A. Morgan Stanley was selling its</p> <p>24 building in Canary Wharf to Heintz, and there</p> <p>25 were two deeds of release that Canary Wharf</p>

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<p>1 F. Bartolotta</p> <p>2 needed to deliver in connection with the</p> <p>3 transaction. And we were trying to close very</p> <p>4 quickly, and I asked George if he could get his</p> <p>5 attorney to act on it quickly as we wanted to</p> <p>6 deliver the documents to Heintz in Texas that</p> <p>7 day or the day after. And his attorney just</p> <p>8 couldn't get a hold of him. So I had called</p> <p>9 George and said could you please try and get</p> <p>10 your attorney to sign these. They were already</p> <p>11 agreed to. It was just a matter of getting</p> <p>12 them signed and delivered.</p> <p>13 Q. Is this the same transaction you were</p> <p>14 discussing with Mr. Iacobescu when you first</p> <p>15 spoke with him about speaking to Sullivan &</p> <p>16 Cromwell lawyers?</p> <p>17 A. No. They're two different things.</p> <p>18 When I went to London, I had lunch</p> <p>19 with George, talked to him about the Morgan</p> <p>20 Stanley deal. We mentioned the Lehman</p> <p>21 litigation, but they were two unrelated,</p> <p>22 completely unrelated things.</p> <p>23 Q. Okay.</p> <p>24 Last line of this -- actually, before</p> <p>25 we get there.</p>	<p>1 F. Bartolotta</p> <p>2 So he's a social friend of yours?</p> <p>3 A. Yes, I would call him a friend.</p> <p>4 Q. Okay.</p> <p>5 (Bartolotta's Exhibit 11, Series of</p> <p>6 EMail, Bates Nos. CW75980 to 81, was</p> <p>7 marked for identification.)</p> <p>8 BY MR. ISAKOFF:</p> <p>9 Q. Mr. Bartolotta, Exhibit 11 is CW75980</p> <p>10 to 81, which is an email chain also on</p> <p>11 March 27th between you and Sullivan & Cromwell</p> <p>12 lawyers, including Mr. Tulchin and Mr. Shenker.</p> <p>13 Have I correctly characterized the</p> <p>14 document?</p> <p>15 A. Yes.</p> <p>16 Q. Did you ever get together with</p> <p>17 Mr. Shenker?</p> <p>18 A. No.</p> <p>19 MR. ISAKOFF: All right. Why don't</p> <p>20 we take a break?</p> <p>21 THE WITNESS: Okay.</p> <p>22 THE VIDEOGRAPHER: The time is 2:52.</p> <p>23 We're going off the record.</p> <p>24 (Recess taken from 2:52 p.m. to</p> <p>25 3:09 p.m.)</p>
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<p>1 F. Bartolotta</p> <p>2 A. Uh-huh.</p> <p>3 Q. You say, "Small world. I hadn't</p> <p>4 worked with Joe Shenker since 1982 when we did</p> <p>5 the first commercial paper financing of real</p> <p>6 estate."</p> <p>7 Had you spoken with Mr. Shenker since</p> <p>8 1982?</p> <p>9 A. I don't think so, no. In fact, I</p> <p>10 didn't even remember who he was when he first</p> <p>11 called me.</p> <p>12 Q. Okay.</p> <p>13 And then the next paragraph says,</p> <p>14 "Hopefully, the next time I come to London we</p> <p>15 can enjoy some time together with our wives at</p> <p>16 Harry's Bar without having to discuss business</p> <p>17 issues."</p> <p>18 A. Yes.</p> <p>19 Q. Had you met Mr. Iacobescu's wife</p> <p>20 before?</p> <p>21 A. Oh, yes. Yes.</p> <p>22 Q. On how many occasions?</p> <p>23 A. Over the -- from 1990 to 2005,</p> <p>24 numerous times, you know, we went out socially.</p> <p>25 Q. Okay.</p>	<p>1 F. Bartolotta</p> <p>2 THE VIDEOGRAPHER: The time is 3:09.</p> <p>3 We're back on the record.</p> <p>4 BY MR. ISAKOFF:</p> <p>5 Q. Mr. Bartolotta, do you still have</p> <p>6 Exhibit 10 in front of you. It's the email</p> <p>7 from you to Mr. Iacobescu dated March 27th.</p> <p>8 MR. MASELLA: There it is.</p> <p>9 BY MR. ISAKOFF:</p> <p>10 Q. I know I asked you about this before</p> <p>11 the break and I may have misunderstood your</p> <p>12 answer. The question I have is, the Heintz</p> <p>13 transaction that this refers to, is that</p> <p>14 something that you had been talking to</p> <p>15 Mr. Iacobescu about in mid March of this year</p> <p>16 in London?</p> <p>17 A. I had spoken to him about it before</p> <p>18 that time and then again when I went to London,</p> <p>19 I talked to him about it, yes.</p> <p>20 Q. Okay.</p> <p>21 Were there any other things connected</p> <p>22 to Morgan Stanley that you were talking to</p> <p>23 Mr. Iacobescu about in and about March of this</p> <p>24 year?</p> <p>25 A. We talked about things that we did</p>

1 F. Bartolotta
2 MR. ISAKOFF: Object to form. It
3 assumes there is only two possibilities.
4 MR. MASELLA: You may answer.
5 A. It appeared to me to be a reflection
6 of our discussion.
7 Q. Now, with respect to the drafts that
8 followed this, did the changes that were made
9 on the successive drafts, including the changes
10 that Mr. Isakoff pointed out to you on direct
11 examination, did those changes get made because
12 you asked for them to be made?
13 A. Yes.
14 Q. Now, can I ask you, Mr. Bartolotta,
15 to go back to Exhibit 1. This is the executed
16 affidavit.
17 And could you look, please, sir, on
18 the paragraph 5 on the second page. I'm just
19 going to read it and then I want to ask you
20 some questions.
21 Paragraph 5 says this, I recall the
22 negotiations around the provisions in the lease
23 dealing with the indemnity to be given by the
24 parent company Lehman because we fought very
25 hard to limit liability to the English

1 F. Bartolotta
2 subsidiary. However Canary Wharf's position
3 was immovable. George Iacobescu, CEO of Canary
4 Wharf, insisted on a full indemnity, i.e., a
5 direct contractual obligation from the parent,
6 Lehman, that could be relied on no matter what
7 happened to LBL (the English subsidiary). He
8 insisted that Lehman would be required to pay
9 the rents and other amounts due regardless of
10 whether LBL remained obligated to pay."
11 Now that's the full paragraph 5;
12 correct?
13 A. Yes.
14 Q. Can you tell me, sitting here today
15 May 7, 2014, what you remember about the
16 negotiations that pertain to what's said in
17 paragraph 5?
18 MR. ISAKOFF: Objection. Lack of
19 foundation.
20 MR. MASELLA: You may answer.
21 A. During the negotiations, this
22 indemnity, as it's called, was on the table and
23 I objected to it because I did not want to have
24 the U.S. entity be responsible.
25 Canary Wharf insisted that they would

1 F. Bartolotta
2 not complete the deal without this document.
3 At that point, because I was working on many
4 things and was not going to be my decision I
5 was booted back to New York for consideration
6 on the premise that Canary Wharf would not
7 complete the transaction without delivery of
8 that document.
9 It was then negotiated in New York
10 and delivered back and slipped into the
11 documents as is. So that reflects my
12 understanding, I could not complete the deal
13 without that document being delivered.
14 Whether the words were changed or
15 not, I do not know because I did not negotiate
16 the document, but the document was ultimately
17 delivered to Canary Wharf's satisfaction and
18 the deal was completed.
19 Q. Do you recall Mr. Iacobescu -- well,
20 strike that.
21 Let me start with this. Did you
22 speak directly to Mr. Iacobescu about this
23 subject?
24 A. Yes.
25 Q. And you recall those conversations?

1 F. Bartolotta
2 A. Yes.
3 Q. Do you recall Mr. Iacobescu saying to
4 you, in words or substance, that Canary Wharf
5 would not do the deal without a direct
6 contractual obligation from the parent in
7 New York --
8 A. Yes.
9 MR. ISAKOFF: Wait a minute. Let him
10 finish the question. Then let me object.
11 BY MR. TULCHIN:
12 Q. -- that could be relied on, no matter
13 what happened to the English subsidiary?
14 MR. ISAKOFF: I object to the form.
15 MR. MASELLA: You may answer.
16 A. Can you ask the question again
17 because I lost track when I answered.
18 Q. Sure.
19 Do you recall Mr. Iacobescu in your
20 conversation saying that Canary Wharf would not
21 do the deal unless the parent in New York was
22 on the hook to pay the rent no matter what
23 happened to the English subsidiary?
24 MR. ISAKOFF: I object to the form.
25 MR. MASELLA: You may answer.

1 F. Bartolotta
2 MR. MASELLA: You may answer.
3 A. I don't understand when you say
4 what's important. What -- to me, the thing
5 that I remember the most about the transaction,
6 as it relates to what we're talking about here,
7 is that I could not complete the transaction
8 without signing the document called Indemnity
9 in the Schedule 4.
10 That's the one thing that really
11 sticks out, because it was a hard fought
12 negotiation over an extended period of time and
13 the document was the last thing that we had to
14 get through to get the deal complete.
15 And so it stands out to me that we
16 were -- we were -- the deal was heavily
17 negotiated and this is last point of the whole
18 thing was delivering this agreement.
19 Q. And did you understand at the time
20 that what Lehman would be required to deliver
21 was this absolute promise from the New York
22 parent to pay no matter what might happen to
23 the English subsidiary?
24 MR. ISAKOFF: I object to form and
25 calls for a legal conclusion.

1 F. Bartolotta
2 MR. MASELLA: You may answer.
3 A. That was my understanding.
4 MR. TULCHIN: Nothing else.
5 MR. ISAKOFF: All right. Let's take
6 a break and we'll have a few more
7 questions.
8 MR. MASELLA: We don't need a break.
9 MR. ISAKOFF: I need a break. I need
10 to consult with my client for a minute.
11 THE VIDEOGRAPHER: The time is 3:39.
12 We're going off the record.
13 (Recess taken from 3:39 p.m. to
14 3:45 p.m.)
15 THE VIDEOGRAPHER: The time is 3:45.
16 We're back on the record.
17
18 EXAMINATION BY MR. ISAKOFF:
19 Q. Mr. Bartolotta, I appreciate you
20 making yourself available to us for this and I
21 just have another couple of questions.
22 If you'll look at Exhibit 1, which is
23 the --
24 A. Yes.
25 Q. -- this is the final of your

1 F. Bartolotta
2 affidavit. And on Mr. Tulchin's examination,
3 he pointed you to paragraph 7 and he pointed
4 the words "complete certainty of income stream
5 going forward."
6 Do you see that?
7 A. Yes.
8 Q. Now, is it your testimony that
9 Mr. Iacobescu told you that Canary Wharf would
10 not go forward with the deal unless LBHI,
11 Lehman Brothers Holdings, Inc., agreed to sign
12 on the Schedule 4?
13 A. Yes.
14 MR. MASELLA: Objection. Misstates
15 the testimony.
16 You may answer.
17 A. Yes.
18 Q. And do you have enough expertise in
19 English law to know whether Schedule 4 provides
20 for complete certainty of income stream going
21 forward from LBHI under any and all
22 circumstances, including where Canary Wharf
23 terminated the LBL lease and did not serve a
24 notice under Section 7 of the Surety Agreement
25 requiring Lehman Brothers Holdings, Inc. to

1 F. Bartolotta
2 accept a substitute lease?
3 A. I'm not an English lawyer. I did not
4 understand the difference.
5 Q. Okay.
6 So you don't know whether Schedule 4
7 itself unconditionally provided for complete
8 certainty of income stream going forward;
9 correct?
10 A. It was my understanding that's what
11 it did. I don't know for sure under English
12 law, but my understanding, that's what that
13 document accomplished.
14 Q. Okay.
15 But you don't have any independent
16 expertise of your own?
17 A. No.
18 Q. Okay.
19 And I know that Mr. Tulchin asked you
20 whether you believed everything that's factual
21 in the affidavit to be true and you testified
22 that you thought it was.
23 A. Uh-huh.
24 Q. Are you aware of all of the legal
25 implications of some of the terms that are

1 F. Bartolotta
2 sprinkled throughout the affidavit, including
3 the use of the word "indemnity"?
4 A. I used the word "indemnity" because
5 that's what document was called. My
6 understanding, I'm not an English lawyer, I
7 don't know the real difference, I didn't know
8 the difference at the time, all my
9 understanding was is that the parent was going
10 to stand behind the subsidiary in all
11 instances.
12 Q. Okay.
13 So it's fair to say you think the
14 document is true -- that the affidavit is true
15 as a factual matter, but you may not be aware
16 of all the legal implications of what it
17 actually says; is that correct?
18 A. Correct.
19 MR. ISAKOFF: Nothing further.
20 MR. TULCHIN: Nothing from me.
21 MR. MASELLA: Just before we go off
22 the record, the witness would like the
23 opportunity to review the transcript and
24 prepare an errata.
25 And thank you very much, everyone,

1 F. Bartolotta
2 for your courtesy here today.
3 THE VIDEOGRAPHER: The time is 3:48.
4 This is the completion of today's
5 deposition, May 7, 2014.
6 (The deposition was concluded at
7 3:48 p.m.)
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FRANK BARTOLOTTA

Subscribed and sworn to before me
this day of 2014.

1 F. Bartolotta
2
3 C E R T I F I C A T E
4
5 STATE OF NEW YORK)
6) ss.:
7 COUNTY OF NEW YORK)
8
9 I, THOMAS A. FERNICOLA, Registered
10 Reporter and Notary Public within and for
11 the State of New York, do hereby certify
12 that the within is a true and accurate
13 transcript of the proceedings held on May
14 7, 2014.
15 That I am not related to any of the
16 parties to this action by blood or
17 marriage; and that I am in no way
18 interested in the outcome of this matter.
19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 7th day of May, 2014.
21
22
23
24
25

THOMAS A. FERNICOLA, RPR

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